National Coalition for Assistive and Rehab Technology

1050 17th Street Northwest, Suite 600 Washington, DC 20036, 202-776-0652

National Coalition for Assistive and Rehab Technology

Written Testimony for the Record

Hearing on

<u>"CMS competitive bidding demonstration for DME – Bad Medicine for Small Business."</u>

In the

Rural and Urban Entrepreneurship Subcommittee

Committee on Small Business

of the

U.S. House of Representatives

May 21, 2008

On behalf of The National Coalition for Assistive and Rehab Technology (NCART), I appreciate the opportunity to testify regarding the impact of competitive bidding on small businesses and more specifically those involved in the provision of complex rehab technology. NCART is a coalition of suppliers and manufacturers of assistive and rehab technology products and services. The coalition's mission is to ensure proper and appropriate access to rehab and assistive technology for individuals with disabilities. CMS currently classifies rehab and assistive technology under the durable medical equipment (DME) benefit within Medicare.

Background

In order to understand how competitive bidding will impact small businesses in this industry, it is important to have a basic knowledge of these businesses. More than 50% of the providers in this industry qualify as small businesses with annual revenues between $3 and $5Million. Most are privately owned businesses which are generally well entrenched in their communities and have established relationships with their customers and allied health professionals. Complex rehab and assistive technologies are adaptive seating, positioning and mobility devices that are evaluated, fitted, configured, adapted, and modified based on the unique clinical and functional needs of people with severe disabilities. These disabilities may include neurological or myopathic conditions, congenital deformities, and other complex and progressive diseases such as muscular dystrophy, ALS (Lou Gehrig's disease), spina bifida, cerebral palsy and spinal cord injuries. What differentiates complex rehab companies from other home medical equipment suppliers is the level of products that are supplied, the level of staff required to provide it and the amount of time and labor involved.

Companies that adhere to the long-standing service/delivery model that provides the best clinical outcome for consumers or complex rehab are required to employ certified staff and to run their operations in a certain way. All of this comes with a high cost. In a study performed by a D.C. based economics firm for NCART, companies operating in this field experience a net operating income of 1.6%[1]. This is based on non product costs in the 50.5% range along with a product cost of 47.9% for these companies. With such high non-product expenses and such minimal net operating income, the complex rehab technology industry is already unstable. Coupled with the cash flow challenges of dealing with third party payers and increases in things like fuel and payroll cost, these companies are even more challenged to remain viable.

It is also important to note that suppliers and manufacturers of complex rehab technologies have already absorbed significant cuts in reimbursement resulting from coding changes and congressionally mandated reimbursement cuts. Moreover, the CPI increase for the Medicare fee schedule for existing HCPCS codes has been frozen for almost a decade while costs associated

---

[1] The Impact of Proposed Reimbursement Changes on Providers of Rehab and Assistive Technology: Evidence from a Provider Survey November, 2006 THE MORAN COMPANY

with the provision of this technology has increased. The DME industry in general has only received one permanent Medicare fee schedule increase since 1998.

Competitive Bidding Impact on Small Rehab Suppliers

Round one of competitive bidding continues to move forward in spite of many inequities and controversies that have been uncovered. The areas of concern range from both the resulting prices and their calculations to the actual winning bidders and how they were selected. CMS continues to claim that it has addressed all concerns appropriately but the fact still remains that many small businesses have already been injured by this program. The fact still remains that the single payment amounts for complex rehab were, to a great extent, based on bids submitted by companies with no experience in the provision of complex rehab, companies that have no experience providing any products within the specific CBA, and in several situations, bids submitted only in an effort to "practice" in preparation of round 2. The result is that the single payment amounts established for many complex rehab HCPCS codes are unrealistic.

Medicare is not the only payer for complex rehab technology but is often reported to account for about 30% of revenue for the typical rehab focused company. For a business with $1.5 million in revenue a Medicare portion of 30% would mean that $450,000 of their revenue was resulting from Medicare reimbursement. Using the costs reported in the Moran study, the impact of accepting a 15% reduction off the Medicare fee schedule in order to provide product in the competitive bidding areas would dramatically undermine the viability and long-term stability of the company as shown below.

RTC with Revenue of 1.5M Prior to competitive bidding	Cost of goods 47.9%= $718,500	Non-product related costs 50.5% = $757,500	Net Operating Income = $24,000
Post competitive bidding winner with 15% reduction in reimbursement for Medicare Sales (30% of total revenue) $1.4325M- a loss of revenue of $67,500.	Cost of goods would not change as a result of the cut in reimbursement	Non-product related costs would not change as a result of the cut in reimbursement $757,500	-$43,500 loss

	$718,500		
Post competitive bidding supplier looses Medicare business -$1.050M revenue	$502,950	Non-product related costs would not change $757,500	-$210,450 loss

It is clear from the above examples that a small supplier whether a winner or loser in competitive bidding is unlikely to be able to sustain a reduction in reimbursement or a loss of Medicare revenues. Given that many state Medicaid programs and third party payers use Medicare fee schedules and policies as a baseline this will further reduce the revenue for these companies and will cause further losses.

Unqualified companies awarded contracts in the CBAs

One obvious anomaly of round one is that the competitive bidding program is allowing suppliers with no physical presence in a Competitive Bidding Area (CBA) to enter a new market with an unfair competitive advantage and markedly fewer competitors. The program allows suppliers with no physical location in a CBA, no direct employed staff in the CBA and with no financial investment in the CBA to enter a new market by way of a Medicare contract. It is important to note that this unfair advantage has a strong potential to reduce service or responsiveness for Medicare beneficiaries in the CBA. Many small local rehab companies with years of experience in the market may be excluded from the program due to their composite bid price combined with the claimed capacity of competing bidders. The companies with a financial investment in facilities, staff, and equipment needed to repair and service devices, along with other costs associated with appropriate service of complex rehab technology requires a higher level of reimbursement than a supplier that has no financial investment. The industry of complex rehab companies supports an efficient, yet adequate service/delivery model. The model that the competitive bidding program promotes is one that fails to protect access and fails to ensure Medicare beneficiaries the services they need for a positive clinical outcome.

Additionally, some companies bid on product categories in CBAs that they had no intention of going in to. I personally have knowledge of a provider who bid in a CBA as practice. This means that their price was included in the calculation although they were not a serious entry in the process.

Accreditation standards were not adequately implemented

Companies that have not traditionally operated in a given business sector were also allowed to be awarded contracts based on a loophole in the accreditation standards. One example is a large provider of standard mobility products that was awarded the "Complex Rehab mobility" contract in several of the 10 MSAs. The company was accredited as an HME company because that was the only set of standards that could be applied when they were surveyed. Even though rehab standards have since been developed and are now a current requirement for passing accreditation, this company was able to be awarded a bid because their accreditation does not expire until 2009. This means that they were not required to meet the "rehab standards" in winning the bid. This is a company that has not historically been a complex rehab provider and has not employed complex rehab staff but they were able to bid and win against qualified small businesses that were already in the markets.

Small businesses may be forced to enter sub-contracts or networks to maintain their revenue

While CMS will allow suppliers to join networks or subcontract in order to maintain their ability to service a market, they will be forced to give up a greater piece of the reimbursement to participate. If a small business that is already struggling is forced to pay a percentage to the contractor who already bid a low price then the net effect will be even more devastating to these companies. If we use the above Moran assumptions and the average reimbursement reduction is already 15%, there is no more margin room for the sub-contracting supplier to give to the contractor in order to maintain the market.

In effect, round one has created no winners when it comes to small businesses or even large businesses. The bid prices have resulted from a flawed process and small businesses will be forced to pay the price if this continues to move forward. Allowing prices to be implemented that are established out of fear, speculation or misinformation is irresponsible and will not serve the needs of Medicare's most disabled beneficiaries.

NCART strongly believes that competitive bidding will not work for complex rehab items and that ultimately it will cause an access issue for Medicare beneficiaries with disabilities. The large numbers of small businesses in our industry will begin losing money and will be forced to reduce staff or ultimately close their doors. This will force Medicare beneficiaries to abandon relationships with providers that they know and are comfortable with based on price and not a true ability to serve their needs.

It is critical that steps be taken to exempt complex rehab technology from competitive bidding and to preserve access to this important technology. The small businesses in this sector will need the assistance of Congress in order to make this happen. Legislation to exempt complex rehab from the national competitive bidding program has been introduced in both the House and the Senate. HR 2231 currently has 42 cosponsors in the House of Representatives. We urge this subcommittee to support HR 2231 and to actively seek to have this legislation enacted this year..

We appreciate the opportunity to testify in this hearing. Please direct any questions or concerns to NCART's executive director, Sharon Hildebrandt at 202-776-0652.